

GREGORY MURPHY
California State Bar No. 245505
FEDERAL DEFENDERS OF SAN DIEGO, INC.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
gregory_murphy@fd.org

Attorneys for Mr. Alejandro Amezcua-Manzo

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE WILLIAM Q. HAYES)

UNITED STATES OF AMERICA,)	CASE NO. 08-cr-0298-WQH
)	
Plaintiff,	)	DATE: March 17, 2008
	)	TIME: 2:00 p.m.
)	
v.	)	NOTICE OF MOTIONS AND
	)	MOTIONS:
)	
ALEJANDRO AMEZCUA-MANZO,	)	(1) TO COMPEL DISCOVERY;
	)	(2) FOR LEAVE TO FILE
Defendant.	)	FURTHER MOTIONS;
)	
_____)	_____

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND
AARON B. CLARK, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on November 2, 2007, at 11:00 p.m., or as soon thereafter as counsel may be heard, the defendant, Alejandro Amezcua-Manzo, by and through his counsel, Gregory T. Murphy and Federal Defenders of San Diego, Inc., will ask this Court to enter an order granting the following motions.

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MOTIONS

The defendant, Alejandro Amezcua-Manzo, by and through his attorneys, Gregory Murphy and Federal Defenders of San Diego, Inc., pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law and local rules, hereby moves this Court for an order:

- 1) compelling discovery;
- 2) for leave to file further motions.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, and all other materials that may come to this Court's attention at the time of the hearing on these motions.

Respectfully submitted,

/s/ Gregory Murphy

Dated: November 3, 2007

GREGORY MURPHY
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Alejandro Amezcua-Manzo
gregory_murphy@fd.org

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California State Bar No. 245505
FEDERAL DEFENDERS OF SAN DIEGO, INC.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE WILLIAM Q. HAYES)

UNITED STATES OF AMERICA,	)	CASE NO. 08-cr-0298-WQH
)	
Plaintiff,)	
	)	STATEMENT OF FACTS AND
v.	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF
ALEJANDRO AMEZCUA-MANZO	)	DEFENDANT'S MOTIONS
)	
Defendant)	
_____)	

I.

STATEMENT OF FACTS

Mr. Amezcua-Manzo was arrested on January 25, 2008 at a campground on Highway 78.
The government alleges Mr. Amezcua-Manzo assisted in the transport of undocumented immigrants within the United States.

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1 II.

2 **MOTION TO COMPEL DISCOVERY**

3 Mr. Amezcua-Manzo requests the following discovery. His request is not limited to those
4 items of which the prosecutor is aware. It includes all discovery listed below that is in the custody,
5 control, care, or knowledge of any “closely related investigative [or other] agencies.” See United
6 States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

7 1. The Defendant’s Statements. The government must disclose to Mr. Amezcua-Manzo *all*
8 copies of any written or recorded statements made by Mr. Amezcua-Manzo; the substance of any
9 statements made by Mr. Amezcua-Manzo that the government intends to offer in evidence at trial;
10 any response by Mr. Amezcua-Manzo to interrogation; the substance of any oral statements that the
11 government intends to introduce at trial and any written summaries of Mr. Amezcua-Manzo’s oral
12 statements contained in the handwritten notes of the government agent; any response to any Miranda
13 warnings that may have been given to Mr. Amezcua-Manzo; and any other statements by Mr.
14 Amezcua-Manzo. Fed. R. Crim. P. 16(a)(1)(A) and (B). The Advisory Committee Notes and the
15 1991 amendments to Rule 16 make clear that the government must reveal *all* Mr. Amezcua-Manzo’s
16 statements, whether oral or written, regardless of whether the government intends to make any use
17 of those statements.

18 2. Arrest Reports, Notes and Dispatch Tapes. Mr. Amezcua-Manzo also specifically
19 requests that all arrest reports, notes and dispatch or any other tapes that relate to the circumstances
20 surrounding his arrest or any questioning, if such reports have not already been produced *in their*
21 *entirety*, be turned over to him. This request includes, but is not limited to, any rough notes, records,
22 reports, transcripts or other documents in which statements of Mr. Amezcua-Manzo or any other
23 discoverable material is contained. Mr. Amezcua-Manzo includes in this request any redacted
24 portions of the Report of Investigation (“ROI”) and any subsequent ROIs that the case agent or any
25 other agent has written. This is all discoverable under Fed. R. Crim. P. 16(a)(1)(A) and (B) and
26 Brady v. Maryland, 373 U.S. 83 (1963). See also Loux v. United States, 389 F.2d 911 (9th Cir.

1 1968). Arrest reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn
2 statements, and prosecution reports pertaining to Mr. Amezcua-Manzo are available under Fed. R.
3 Crim. P. 16(a)(1)(A) and (B), Fed. R. Crim. P. 26.2 and 12(I). Preservation of rough notes is
4 requested, whether or not the government deems them discoverable.

5 3. Brady Material. Mr. Amezcua-Manzo requests all documents, statements, agents'
6 reports, and tangible evidence favorable to him on the issue of guilt and/or that affects the credibility
7 of the government's case. Impeachment and exculpatory evidence both fall within Brady's definition
8 of evidence favorable to the accused. United States v. Bagley, 473 U.S. 667 (1985); United States
9 v. Agurs, 427 U.S. 97 (1976).

10 4. Any Information That May Result in a Lower Sentence. As discussed above, any
11 information that may result in a more favorable sentence must also be disclosed pursuant to Brady,
12 373 U.S. 83. The government must disclose any cooperation or attempted cooperation by Mr.
13 Amezcua-Manzo, as well as any information that could affect any base offense level or specific
14 offense characteristic under Chapter Two of the United States Sentencing Commission Guidelines
15 Manual ("Guidelines"). Also included in this request is any information relevant to a Chapter Three
16 adjustment, a determination of Mr. Amezcua-Manzo's criminal history, or any other application of
17 the Guidelines.

18 5. The Defendant's Prior Record. Evidence of a prior record is available under Fed. R.
19 Crim. P. 16(a)(1)(D). Mr. Amezcua-Manzo specifically requests a complete copy of any criminal
20 record.

21 6. Any Proposed 404(b) Evidence. Evidence of prior similar acts is discoverable under Fed.
22 R. Crim. P. 16(a)(1)(D) and Fed. R. Evid. 404(b) and 609. In addition, under Fed. R. Evid. 404(b),
23 "upon request of the accused, the prosecution . . . shall provide reasonable notice in advance of trial
24 . . . of the general nature" of any evidence the government proposes to introduce under Fed. R.
25 Evid. 404(b) at trial. Sufficient notice requires the government to "articulate *precisely* the evidential
26 hypothesis by which a fact of consequence may be inferred from the other acts evidence." United
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1 States v. Mehrmanesh, 689 F.2d 822, 830 (9th Cir. 1982) (emphasis added; internal citations
2 omitted); see also United States v. Brooke, 4 F.3d 1480, 1483 (9th Cir. 1993) (reaffirming
3 Mehrmanesh and reversing convictions).

4 This includes any “TECS” records (records of prior border crossings) that the government
5 intends to introduce at trial, whether in its case-in-chief, impeachment, or rebuttal. Although there
6 is nothing intrinsically improper about prior border crossings, they are nonetheless subject to 404(b),
7 as they are “other acts” evidence that the government must produce before trial. United States v.
8 Vega, 188 F.3d 1150, 1154-1155 (9th Cir. 1999). Mr. Amezcua-Manzo requests that such notice
9 be given three weeks before trial to give the defense time to adequately investigate and prepare for
10 trial.

11 7. Evidence Seized. Evidence seized as a result of any search, either warrantless or with a
12 warrant, is discoverable under Fed. R. Crim. P. 16(a)(1)(E).

13 8. Request for Preservation of Evidence. The defense specifically requests that all dispatch
14 tapes or any other physical evidence that may be destroyed, lost, or otherwise put out of the
15 possession, custody, or care of the government and that relate to the arrest or the events leading to
16 the arrest in this case be preserved. This request includes, but is not limited to vehicle involved in
17 the case, Mr. Amezcua-Manzo’s personal effects, the alleged marijuana, and any evidence seized
18 from Mr. Amezcua-Manzo or any third party. This request also includes any material or percipient
19 witnesses who might be deported or otherwise likely to become unavailable (e.g. undocumented
20 aliens and transients). Mr. Amezcua-Manzo requests that the prosecutor be ordered to question all
21 the agencies and individuals involved in the prosecution and investigation of this case to determine
22 if such evidence exists, and if it does exist, to inform those parties to preserve any such evidence.

23 9. Henthorn Material. Mr. Amezcua-Manzo requests that the Assistant United States
24 Attorney (“AUSA”) assigned to this case oversee (not personally conduct) a review of all personnel
25 files of each agent involved in the present case for impeachment material. See Kyles v. Whitley, 514
26 U.S. 437, 438 (1995) (holding that “the individual prosecutor has a duty to learn of any favorable
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evidence known to the others acting on the government's behalf in the case, including the police"); United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991). This request includes, but is not limited to, any complaints filed (by a member of the public, by another agent, or any other person) against the agent, whether or not the investigating authority has taken any action, as well as any matter for which a disciplinary review was undertaken, whether or not any disciplinary action was ultimately recommended. Mr. Amezcua-Manzo further requests production of any such information at least one week prior to the motion hearing and two weeks prior to trial. If the prosecutor is uncertain whether certain information should be disclosed pursuant to this request, this information should be produced to the Court in advance of the motion hearing and the trial for an in camera inspection.

10. Tangible Objects. Mr. Amezcua-Manzo requests the opportunity to inspect, copy, and test, as necessary, all other documents and tangible objects, including photographs, books, papers, documents, alleged narcotics, fingerprint analyses, vehicles, or copies of portions thereof, that are material to the defense or intended for use in the government's case-in-chief or were obtained from or belong to Mr. Amezcua-Manzo. Fed. R. Crim. P. 16(a)(1)(E). Specifically, Mr. Amezcua-Manzo requests **color copies** of all photographs in the government's possession of the alleged narcotics and the vehicle in which the narcotics were found.

11. Expert Witnesses. Mr. Amezcua-Manzo requests the name, qualifications, and a written summary of the testimony of any person that the government intends to call as an expert witness during its case in chief. Fed. R. Crim. P. 16(a)(1)(G). This summary should include a description of the witness' opinion(s), as well as the bases and the reasons for the opinion(s). See United States v. Duvall, 272 F.3d 825 (7th Cir. 2001) (finding that government's written expert notice did not adequately summarize or describe police detective's testimony in drug prosecution where notice provided only a list of the general subject matters to be covered and failed to identify what opinion the expert would offer on those subjects). This request includes, but is not limited to, disclosure of the qualifications of any government witness who will testify that he understands and/or speaks Spanish or any other foreign language that may have been used during the course of an interview

1 with Ms. Amezcua-Manzo or any other witness. Mr. Amezcua-Manzo requests the notice of expert
2 testimony be provided at a minimum of three weeks prior to trial so that the defense can properly
3 prepare to address and respond to this testimony, including obtaining its own expert and/or
4 investigating the opinions, credentials of the government's expert and obtain a hearing in advance
5 of trial to determine the admissibility of qualifications of any expert. See Kumho v. Carmichael Tire
6 Co., 526 U.S. 137, 119 S.Ct. 1167, 1176 (1999) (trial judge is "gatekeeper" and must determine,
7 reliability and relevancy of expert testimony and such determinations may require "special briefing
8 or other proceedings")

9 12. Impeachment evidence. Mr. Amezcua-Manzo requests any evidence that any prospective
10 government witness has engaged in any criminal act whether or not resulting in a conviction and
11 whether any witness has made a statement favorable to Mr. Amezcua-Manzo. See Fed. R. Evid. 608,
12 609 and 613. Such evidence is discoverable under Brady, 373 U.S. 83. See United States v. Strifler,
13 851 F.2d 1197 (9th Cir. 1988) (witness' prior record); Thomas v. United States, 343 F.2d 49 (9th
14 Cir. 1965) (evidence that detracts from a witness' credibility).

15 13. Evidence of Criminal Investigation of Any Government Witness. Mr. Amezcua-Manzo
16 requests any evidence that any prospective witness is under investigation by federal, state or local
17 authorities for any criminal conduct. United States v. Chitty, 760 F.2d 425 (2d Cir. 1985).

18 14. Evidence of Bias or Motive to Lie. Mr. Amezcua-Manzo requests evidence that any
19 prospective government witness is biased or prejudiced against Mr. Amezcua-Manzo, or has a
20 motive to falsify or distort his or her testimony. Pennsylvania v. Ritchie, 480 U.S. 39 (1987);
21 Strifler, 851 F.2d 1197.

22 15. Evidence Affecting Perception, Recollection, Ability to Communicate, or Veracity.
23 Ms. Flores requests any evidence, including any medical or psychiatric report or evaluation, tending
24 to show that any prospective witness's ability to perceive, remember, communicate, or tell the truth
25 is impaired; and any evidence that a witness has ever used narcotics or other controlled substance,
26 or has ever been an alcoholic. Strifler, 851 F.2d 1197; Chavis v. North Carolina, 637 F.2d 213, 224
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1 (4th Cir. 1980).

2 16. Witness Addresses. Mr. Amezcua-Manzo requests the name and last known address of
3 each prospective government witness. See United States v. Napue, 834 F.2d 1311 (7th Cir. 1987);
4 United States v. Tucker, 716 F.2d 576 (9th Cir. 1983) (failure to interview government witnesses
5 by counsel is ineffective); United States v. Cook, 608 F.2d 1175, 1181 (9th Cir. 1979) (defense has
6 equal right to talk to witnesses). Mr. Amezcua-Manzo also requests the name and last known
7 address of every witness to the crime or crimes charged (or any of the overt acts committed in
8 furtherance thereof) who will *not* be called as a government witness. United States v. Cadet, 727
9 F.2d 1453 (9th Cir. 1984).

10 17. Names of Witnesses Favorable to the Defendant. Mr. Amezcua-Manzo requests the
11 name of any witness who made any arguably favorable statement concerning Mr. Amezcua-Manzo
12 or who could not identify him or who was unsure of his identity or participation in the crime charged.
13 Jackson v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Chavis, 637 F.2d at 223; Jones v. Jago, 575
14 F.2d 1164, 1168 (6th Cir. 1978); Hudson v. Blackburn, 601 F.2d 785 (5th Cir. 1979), cert. denied, 444
15 U.S. 1086 (1980).

16 18. Statements Relevant to the Defense. Mr. Amezcua-Manzo requests disclosure of any
17 statement that may be “relevant to any possible defense or contention” that he might assert. United
18 States v. Bailleaux, 685 F.2d 1105 (9th Cir. 1982). This includes grand jury transcripts that are
19 relevant to the defense motion to dismiss the indictment.

20 19. Jencks Act Material. Mr. Amezcua-Manzo requests production in advance of the motion
21 hearing or trial of all material, including dispatch tapes, that the government must produce pursuant
22 to the Jencks Act, 18 U.S.C. § 3500 and Fed. R. Crim. P. 26.2. A verbal acknowledgment that
23 “rough” notes constitute an accurate account of the witness’ interview is sufficient for the report or
24 notes to qualify as a statement under section 3500(e)(1). Campbell v. United States, 373 U.S. 487,
25 490-92 (1963); see also United States v. Boshell, 952 F.2d 1101 (9th Cir. 1991) (holding that
26 interview notes constitutes Jencks material when an agent reviews notes with the subject of the
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1 interview); see also United States v. Riley, 189 F.3d 802, 806-808 (9th Cir. 1999). Advance
2 production will avoid the possibility of delay of the motion hearing or trial to allow Mr. Amezcua-
3 Manzo to investigate the Jencks material. Mr. Amezcua-Manzo requests pre-trial disclosure of such
4 statements to avoid unnecessary recesses and delays and to allow defense counsel to prepare for, and
5 use properly any Jencks statements during cross-examination.0

6 20. Giglio Information. Pursuant to Giglio v. United States, 405 U.S. 150 (1972),
7 Mr. Amezcua-Manzo requests all statements and/or promises, expressed or implied, made to any
8 government witnesses, in exchange for their testimony in this case, and all other information that
9 could arguably be used for the impeachment of any government witnesses.

10 21. Agreements Between the Government and Witnesses. Mr. Amezcua-Manzo requests
11 discovery regarding any express or implicit promise, understanding, offer of immunity, of past,
12 present, or future compensation, or any other kind of agreement or understanding, including any
13 implicit understanding relating to criminal or civil income tax, forfeiture or fine liability, between
14 any prospective government witness and the government (federal, state and/or local). This request
15 also includes any discussion with a potential witness about or advice concerning any immigration
16 benefits, any contemplated prosecution, or any possible plea bargain, even if no bargain was made
17 or the advice not followed.

18 22. Informants and Cooperating Witnesses. Mr. Amezcua-Manzo requests disclosure of the
19 names and addresses of all informants or cooperating witnesses used or to be used in this case, and
20 in particular, disclosure of any informant who was a percipient witness in this case or otherwise
21 participated in the crime charged against Mr. Amezcua-Manzo. The government must disclose the
22 informant's identity and location, as well as disclose the existence of any other percipient witness
23 unknown or unknowable to the defense. Roviaro v. United States, 353 U.S. 52, 61-62 (1957). The
24 government must disclose any information derived from informants that exculpates or tends to
25 exculpate Mr. Amezcua-Manzo.

26 23. Bias by Informants or Cooperating Witnesses. Mr. Amezcua-Manzo requests disclosure
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1 of any information indicating bias on the part of any informant or cooperating witness. Giglio, 405
2 U.S. 24. Such information would include what, if any, inducements, favors, payments or threats
3 were made to the witness to secure cooperation with the authorities.

4 25. Personnel Records of Government Officers Involved in the Arrest. Mr. Amezcua-Manzo
5 requests all citizen complaints and other related internal affairs documents involving any of the
6 immigration officers or other law enforcement officers who were involved in the investigation, arrest
7 and interrogation of Mr. Amezcua-Manzo. See Pitchess v. Superior Court, 11 Cal. 3d 531, 539
8 (1974). Because of the sensitive nature of these documents, defense counsel will be unable to
9 procure them from any other source.

10 26. Training of Relevant Law Enforcement Officers. Mr. Amezcua-Manzo requests copies
11 of all written videotaped or otherwise recorded policies or training instructions or manuals issued
12 by all law enforcement agencies involved in the case (United States Customs Service, Border Patrol,
13 INS, Department of Homeland Security, etc.) to their employees regarding: (a) the handling of
14 vehicles suspected to be transporting contraband across the port of entry; (b) the referral to secondary
15 inspection of persons within those vehicles; © the detention of individuals within those vehicles;
16 (d) the search of those vehicles and the occupants of those vehicles, including the proper means of
17 obtaining consent to search and what constitutes consent to search; (e) the informing of suspects of
18 their Constitutional rights; (f) the questioning of suspects and witnesses. Mr. Amezcua-Manzo also
19 requests all written or otherwise attainable information regarding the training of Customs agents at
20 ports of entry in California to detect or discover contraband in vehicles entering the United States,
21 including any training offered to Border Patrol, INS, or officers of Homeland Security Department,
22 by the DEA or other law enforcement agencies or individuals.

23 27. Performance Goals and Policy Awards. Mr. Amezcua-Manzo requests disclosure of
24 information regarding standards used for measuring, compensating or reprimanding the conduct of
25 all law enforcement officers involved in the case (Customs, Border Patrol, INS, etc.) to the extent
26 such information relates to the detection of contraband. This request specifically includes
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1 information concerning performance goals, policy awards, and the standards used by Customs for
2 commending, demoting, or promoting agents for their performance at the port of entry and their
3 success or failure to detect illegal narcotics in general.

4 28. TECS Reports. Mr. Amezcua-Manzo requests all TECS reports, including reports
5 pertaining to all vehicle border crossings pertaining to the vehicle used in this case, any vehicles
6 pertaining to Mr. Moreno, and any crossings by Mr. Moreno. **Any prior border crossings are**
7 **considered “other acts” evidence which the government must produce before trial.** Vega, 188
8 F.3d at 1154.

9 29. Reports of Scientific Tests or Examinations. Pursuant to Fed. R. Crim. P. 16(a)(1)(F),
10 Mr. Amezcua-Manzo requests the reports of all tests and examinations conducted upon the evidence
11 in this case, including, but not limited to, any fingerprint testing done upon any evidence seized in
12 this case, that is within the possession, custody, or control of the government, the existence of which
13 is known, or by the exercise of due diligence may become known, to the attorney for the government,
14 and that are material to the preparation of the defense or are intended for use by the government as
15 evidence in chief at the trial.

16 30. Brady Information. The defendant requests all documents, statements, agents’ reports,
17 and tangible evidence favorable to the defendant on the issue of guilt and/or which affects the
18 credibility of the government’s case. Under Brady v. Maryland, 373 U.S. 83 (1963), impeachment
19 as well as exculpatory evidence falls within the definition of evidence favorable to the accused.
20 United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976).

21 31. Any Proposed 404(b) Evidence. The government must produce evidence of prior similar
22 acts under Fed. R. Crim. P. 16(a)(1) and Fed. R. Evid. 404(b) and any prior convictions which would
23 be used to impeach as noted in Fed. R. Crim. P. 609. In addition, under Fed. R. Evid. 404(b), “upon
24 request of the accused, the prosecution . . . shall provide reasonable notice in advance of trial . . . of
25 the general nature” of any evidence the government proposes to introduce under Fed. R. Evid. 404(b)
26 at trial. The defendant requests notice two weeks before trial to give the defense time to investigate
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1 and prepare for trial.

2 32. Residual Request. The defendant intends by this discovery motion to invoke his rights
3 to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and the
4 Constitution and laws of the United States.

5 **III.**

6 **MOTION FOR LEAVE TO FILE FURTHER MOTIONS**

7 Mr. Amezcua-Manzo has not yet viewed the government's physical evidence against him.
8 Additionally, defense counsel has not yet met with all the material witnesses in this case. As new
9 information surfaces – via discovery provided by government, defense investigation, or an order of
10 this court – the defense may need to file further motions or to supplement existing motions.
11 Accordingly, Mr. Amezcua-Manzo requests leave to file further motions at a later date.

12 **IV.**

13 **CONCLUSION**

14 For the reasons stated, Mr. Amezcua-Manzo requests this Court grant his motions.

15 Respectfully submitted,

16 /s/ Gregory Murphy

17 Dated: February 25, 2008

GREGORY MURPHY
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Amezcua-Manzo
gregory_murphy@fd.org